

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STRIKE 3 HOLDINGS, LLC, a Delaware)
corporation,)
)
Plaintiff,)
) Case No.
vs.) 2:17-cv-01731-TSZ
)
JOHN DOE, subscriber assigned IP)
address 73.225.38.130,)
)
Defendant.)

VIDEOTAPED DEPOSITION OF [REDACTED]

April 9, 2019

10:01 a.m.

Seattle, Washington

Reported by:
Mark Hovila, CCR, CM
CCR No. 2599
Job No. 790669

<p>1 Q. Who?</p> <p>2 A. I do not know his name, but an attorney in</p> <p>3 Spokane.</p> <p>4 Q. Okay. And was that one of the attorneys</p> <p>5 you'd reached out to --</p> <p>6 A. Yes.</p> <p>7 Q. -- see about working on this?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And who referred you to the Terrell</p> <p>10 Marshall firm?</p> <p>11 A. The Terrell --</p> <p>12 Q. This is her firm.</p> <p>13 MS. MCENTEE: I'm going to object and</p> <p>14 instruct the witness not to answer, because it's</p> <p>15 invading the attorney-client privilege.</p> <p>16 BY MR. BANDLOW:</p> <p>17 Q. Did you pay Mr. Edmondson up front to</p> <p>18 represent you in this case?</p> <p>19 A. No.</p> <p>20 MS. MCENTEE: Objection. Instruct the</p> <p>21 client not to answer. You don't get to ask these</p> <p>22 questions about --</p> <p>23 MR. BANDLOW: Are you sure? Compensation to</p> <p>24 an attorney you don't get to ask? Do you want to give</p> <p>25 me a case on that?</p>	<p>Page 30</p> <p>1 and not answer that question?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. How much did have you paid to date in</p> <p>4 legal fees to defend this case?</p> <p>5 MS. MCENTEE: Same objection. And I just</p> <p>6 want to add to that that we are not interested in</p> <p>7 having a waiver of the attorney-client privilege here.</p> <p>8 I think this is an issue that we need to take up with</p> <p>9 the court, because obviously you're entitled to</p> <p>10 explore damages in this case for abuse of process.</p> <p>11 But I think we need to figure out a mechanism for that</p> <p>12 to happen that doesn't involve my client waiving his</p> <p>13 attorney-client privilege, which is why I suggested</p> <p>14 that we try to talk about this off the record before</p> <p>15 we resume questioning.</p> <p>16 MR. BANDLOW: Well, okay, we can go off the</p> <p>17 record if you want to in a minute. I don't ever have</p> <p>18 any intention of asking him anything he's discussed</p> <p>19 with his attorneys, conversations about how to handle</p> <p>20 the case, anything of that nature. I'm interested in</p> <p>21 simply how much he's paid and who's paying the legal</p> <p>22 fees in this case. Period. It will end at that. I'm</p> <p>23 not going to go into anything else attorney-client</p> <p>24 privilege. If you think by his answering that</p> <p>25 question that somehow waives privilege, I don't agree</p>
<p>1 MS. MCENTEE: You want to give me a case on</p> <p>2 the other side?</p> <p>3 MR. BANDLOW: Absolutely you get to ask</p> <p>4 about financial arrangements between the attorney.</p> <p>5 I've asked it about 100 times in cases. You're going</p> <p>6 to instruct him not to answer that?</p> <p>7 MS. MCENTEE: Why don't you let us take a</p> <p>8 break.</p> <p>9 THE VIDEOGRAPHER: We're going off the</p> <p>10 record.</p> <p>11 (Recess)</p> <p>12 THE VIDEOGRAPHER: We are back on the</p> <p>13 record.</p> <p>14 MR. BANDLOW: Did you want to say something</p> <p>15 about the last objection?</p> <p>16 MS. MCENTEE: No. I thought that you were</p> <p>17 intending to just go forward with the questioning and</p> <p>18 allow any objections to be on the record.</p> <p>19 BY MR. BANDLOW:</p> <p>20 Q. Okay. How much did you pay Mr. Edmondson to</p> <p>21 retain him to take this case?</p> <p>22 MS. MCENTEE: Objection and instruction not</p> <p>23 to answer.</p> <p>24 BY MR. BANDLOW:</p> <p>25 Q. Are you going to follow your lawyer's advice</p>	<p>Page 31</p> <p>1 that it does, because I don't think it's privileged</p> <p>2 information, but it's certainly clear for the record I</p> <p>3 don't ever care about any conversations or</p> <p>4 interactions he's had with his counsel. I'm asking</p> <p>5 solely about financial aspects of this case.</p> <p>6 MS. MCENTEE: Certainly if the question is</p> <p>7 have you paid anything, how much have you paid, are</p> <p>8 you obligated to pay, and are you obligated for costs,</p> <p>9 I think those are appropriate questions.</p> <p>10 MR. BANDLOW: Okay. I'd love the answer to</p> <p>11 all of those. They were great. I might even have the</p> <p>12 reporter read them back they, were so good.</p> <p>13 BY MR. BANDLOW:</p> <p>14 Q. Are you obligated to pay costs in this</p> <p>15 lawsuit?</p> <p>16 A. Yes, I am.</p> <p>17 Q. Okay. And have you to date paid costs?</p> <p>18 A. No.</p> <p>19 Q. Have you paid anything in attorney's fees to</p> <p>20 date on this matter?</p> <p>21 A. No.</p> <p>22 Q. Do you know who has -- do you know if anyone</p> <p>23 has paid your attorneys for their services for this</p> <p>24 case?</p> <p>25 A. No. No.</p>

<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p>Page 218</p> <p>1 BY MR. BANDLOW:</p> <p>2 Q. You knew the judge had ordered that Comcast</p> <p>3 had to provide that information to the judge and not</p> <p>4 to us, right?</p> <p>5 MS. MCENTEE: Objection, foundation.</p> <p>6 BY MR. BANDLOW:</p> <p>7 Q. You can answer. She's making objections for</p> <p>8 the record.</p> <p>9 A. Oh. Can you ask it again?</p> <p>10 Q. You had been made aware early on that if the</p> <p>11 judge had entered an order that Comcast was not to</p> <p>12 give your name and address to Strike 3 but was simply</p> <p>13 to give it to the court?</p> <p>14 MS. MCENTEE: Don't answer that question.</p> <p>15 Another objection. You're infringing on the</p> <p>16 attorney-client privilege. Now, if you have some</p> <p>17 other sort of evidence you want to provide to this</p> <p>18 witness that does not infringe on that privilege, by</p> <p>19 all means.</p> <p>20 BY MR. BANDLOW:</p> <p>21 Q. Exhibit 2. Your letter to Comcast. You</p> <p>22 wrote: "In part, the 'MINUTE ORDER' provides that:</p> <p>23 As of 1/25/2018, if the ISP has not already provided</p> <p>24 responsive material to the plaintiff or its counsel,</p> <p>25 the ISP shall not disclose any such responsive</p> <p>Page 219</p> <p>1 Q. Okay. And you filed a declaration early in</p> <p>2 this case essentially saying you'd never heard of us,</p> <p>3 you'd never downloaded anything, et cetera, right?</p> <p>4 A. Yes.</p> <p>5 Q. Were you made aware at the beginning of this</p> <p>6 lawsuit that if Strike 3 could verify the contents of</p> <p>7 that declaration it would dismiss the lawsuit?</p> <p>8 A. I'm assuming that the letter may have -- I</p> <p>9 don't know how, you know -- that they may have what?</p> <p>10 Q. Dismissed the lawsuit if they could just</p> <p>11 confirm the contents of your declaration.</p> <p>12 A. I don't know how -- I'd have to read the</p> <p>13 letter to put it, you know.</p> <p>14 Q. And as of the date when you filed the</p> <p>15 declaration, it was signed John Doe --</p> <p>16 A. Yes.</p> <p>17 Q. -- and we had no idea who you were, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And do you have any idea how long it took</p> <p>20 for Strike 3 to be actually made aware of your name</p> <p>21 and address after filing the lawsuit?</p> <p>22 MS. MCENTEE: I've allowed some leeway here,</p> <p>23 but I'm objecting because you're getting into an</p> <p>24 attorney-client privileged area and it's improper. So</p> <p>25 I think you should move on.</p>
	<p>Page 220</p> <p>1 material to plaintiff or its counsel, but instead</p> <p>2 shall send the responsive material, in an envelope</p> <p>3 promptly marked 'CONFIDENTIAL SUBSCRIBER INFORMATION,</p> <p>4 TO BE FILED UNDER SEAL,' addressed to the Clerk." You</p> <p>5 knew --</p> <p>6 A. Yes.</p> <p>7 Q. -- as of February 2nd, 2018, that the</p> <p>8 information was not going to come to Strike 3, it was</p> <p>9 going to go to the court alone, correct?</p> <p>10 A. Yes. That --</p> <p>11 Q. And when did you find out your ultimate</p> <p>12 information as to who you were and what your address</p> <p>13 had been provided to Strike 3?</p> <p>14 A. When did I find out?</p> <p>15 Q. Yeah.</p> <p>16 MS. MCENTEE: Again, objection and</p> <p>17 instruction not to answer. You are infringing on the</p> <p>18 attorney-client privilege.</p> <p>19 BY MR. BANDLOW:</p> <p>20 Q. Are you going to follow that instruction?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. You were in law enforcement for a</p> <p>23 number of years, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Multiple people in your course of dealing in</p>

<p>1 point of DMCA.</p> <p>2 A. Okay.</p> <p>3 MS. MCENTEE: Counsel, are you going to ask</p> <p>4 questions?</p> <p>5 BY MR. BANDLOW:</p> <p>6 Q. Did you know that?</p> <p>7 A. No.</p> <p>8 MS. MCENTEE: You keep asking this witness,</p> <p>9 a lay witness, questions that are more appropriately</p> <p>10 directed to experts. If you want to keep --</p> <p>11 MR. BANDLOW: No --</p> <p>12 MS. MCENTEE: -- going down that path we</p> <p>13 can, but --</p> <p>14 MR. BANDLOW: No. No. I'm asking about his</p> <p>15 allegations.</p> <p>16 MS. MCENTEE: Okay. Go ahead.</p> <p>17 MR. BANDLOW: Period. Period. I'm reading</p> <p>18 specifically from his allegations.</p> <p>19 BY MR. BANDLOW:</p> <p>20 Q. What was your good faith basis for your</p> <p>21 assertion that Strike 3 has no intention of litigating</p> <p>22 its cases?</p> <p>23 A. Again, it's just based on what I have, you</p> <p>24 know, read that they're more interested in or</p> <p>25 interested in settling without going to court. I</p>	<p>Page 262</p> <p>1 Q. Do you know who Malibu Media is?</p> <p>2 A. I've heard of that, yes, in that research.</p> <p>3 Q. Okay. So you saw some of the information of</p> <p>4 other plaintiffs. Did you put that into the mix of</p> <p>5 what you made as the basis for your allegations</p> <p>6 against Strike 3?</p> <p>7 A. I would -- yeah.</p> <p>8 Q. What other people have done?</p> <p>9 A. What other people and what I observed from</p> <p>10 Strike 3.</p> <p>11 Q. Okay. What did you observe from Strike 3 by</p> <p>12 the time you filed the counterclaim?</p> <p>13 A. Well, on the cases, I'm saying.</p> <p>14 Q. Did you do a PACER search?</p> <p>15 A. I don't have PACER, no.</p> <p>16 Q. You know what PACER is though, right?</p> <p>17 A. Yeah. I thought about, you know --</p> <p>18 Q. You could track federal pleadings, couldn't</p> <p>19 you, with PACER, right?</p> <p>20 A. With?</p> <p>21 Q. With PACER you could track federal</p> <p>22 pleadings.</p> <p>23 A. Well, I don't know that much about it. I</p> <p>24 just know they have access to -- you can get access to</p> <p>25 court decisions and things.</p>
<p>Page 263</p> <p>1 don't -- you know. I've read that numerous times</p> <p>2 and --</p> <p>3 Q. Did you do any research of the lawsuits</p> <p>4 filed by Strike 3 around the country to see if they'd</p> <p>5 actually litigated any of them?</p> <p>6 A. Well, the only ones that I'd done, you know,</p> <p>7 I can't say the only ones. Ones that I had researched</p> <p>8 or printed out in many cases involved numerous filings</p> <p>9 on one filing for numerous IP addresses, and that in</p> <p>10 the end, the only one that was -- that the filing was</p> <p>11 -- everything was thrown out except for the primary.</p> <p>12 Q. Are you talking about cases where there were</p> <p>13 multiple defendants joined in one lawsuit?</p> <p>14 A. Yes.</p> <p>15 Q. Did you read those? You know that's not</p> <p>16 this case, right? This is a --</p> <p>17 A. Yes, I do know that. I'm basing -- I'm</p> <p>18 basing what you're asking me about on what I had read</p> <p>19 and what I had, you know, the things that I had read.</p> <p>20 Q. Does that include things that other</p> <p>21 plaintiffs besides Strike 3 have done in these kind of</p> <p>22 cases? Did that information go into your good faith</p> <p>23 basis for making these allegations? Do you know who</p> <p>24 Prenda is?</p> <p>25 A. No, I don't know who Prenda is.</p>	<p>Page 265</p> <p>1 Q. What do you want out of the counterclaim?</p> <p>2 What do you want?</p> <p>3 A. What do I want?</p> <p>4 Q. Yeah. You've got a counterclaim. What do</p> <p>5 you want?</p> <p>6 A. I want attorney fees covered.</p> <p>7 Q. In case they go after you for attorney's</p> <p>8 fees, because you haven't paid them yet, right?</p> <p>9 A. Huh?</p> <p>10 Q. You haven't had to pay them yet?</p> <p>11 A. I don't want to have to pay anybody for</p> <p>12 attorney fees that I'm wrongly accused of.</p> <p>13 Q. Do you have a deal with your attorneys that</p> <p>14 allowed them to go seek attorney's fees from Strike 3</p> <p>15 so that you don't ever have to pay them?</p> <p>16 MS. MCENTEE: Objection and instruction not</p> <p>17 to answer. You do not get to ask that question.</p> <p>18 MR. BANDLOW: Oh. Questions about retainer</p> <p>19 agreements and how they work aren't proper?</p> <p>20 MS. MCENTEE: I asked you earlier,</p> <p>21 counsel --</p> <p>22 MR. BANDLOW: I'll just make a note for the</p> <p>23 end of this week.</p> <p>24 MS. MCENTEE: No, no, no. I asked you</p> <p>25 earlier to provide me some case law on that issue and</p>

<p>1 you did not.</p> <p>2 MR. BANDLOW: Because you withdrew your</p> <p>3 objection. Now you're making it again.</p> <p>4 MS. McENTEE: No. I went through objection</p> <p>5 as to --</p> <p>6 MR. BANDLOW: You let him answer all of</p> <p>7 them.</p> <p>8 MS. McENTEE: Counsel, please don't</p> <p>9 interrupt.</p> <p>10 MR. BANDLOW: You let him answer all of</p> <p>11 them. That's why I didn't --</p> <p>12 MS. McENTEE: I gave leeway to ask questions</p> <p>13 that are proper. But you don't get to get into the</p> <p>14 details of a retainer agreement. And if you have</p> <p>15 authority, right, which suggests otherwise, please</p> <p>16 share it with me and I am happy to consider it. But</p> <p>17 without that I'm not going to waive my client's</p> <p>18 attorney-client privilege.</p> <p>19 BY MR. BANDLOW:</p> <p>20 Q. So you want the attorney's fees. Right?</p> <p>21 A. Absolutely.</p> <p>22 Q. Okay.</p> <p>23 A. I don't believe I am responsible -- there</p> <p>24 would not have been any attorney fees had the lawsuit</p> <p>25 been brought on me. Wrongly brought on me.</p>	Page 266	<p>1 without knowing about it and are not notified, how are</p> <p>2 to know that it's not -- you're not -- it's not</p> <p>3 copyrighted material?</p> <p>4 Q. If you assume someone knowingly --</p> <p>5 A. If I assume --</p> <p>6 Q. Hold on. If you assume someone knowingly</p> <p>7 went onto BitTorrent to acquire movies that they had</p> <p>8 not paid for so they could watch them, and a DMCA</p> <p>9 notice goes out, would you at least agree that those</p> <p>10 prior infringements of those works should be</p> <p>11 compensated?</p> <p>12 A. Not necessarily. You know, like I say, if</p> <p>13 you're doing something not knowing that you're doing</p> <p>14 something wrong, you know. When you are informed that</p> <p>15 you're doing something wrong and you continue to do</p> <p>16 it, yes, I can see that compensation should be made in</p> <p>17 that case, you know. If somebody is doing something</p> <p>18 that, you know, downloading something that they</p> <p>19 shouldn't and are not aware of it, then, you know,</p> <p>20 it's -- they have to knowingly, at least in criminal,</p> <p>21 I don't know about this kind of law, but I know in a</p> <p>22 criminal prosecution you have to knowingly know that</p> <p>23 you're doing something wrong before --</p> <p>24 Q. Well, do you know that copyright law has no</p> <p>25 state of mind requirement? If you do it you're in</p>	Page 268
<p>1 Q. If you -- it's your understanding that</p> <p>2 ultimately your attorneys are going to seek to have</p> <p>3 you pay their attorney's fees?</p> <p>4 A. That would be -- yes.</p> <p>5 Q. Okay. Anything else you want?</p> <p>6 A. That's -- that's the main thing. I would</p> <p>7 really like to see some practices changed.</p> <p>8 Q. What would you like to see changed?</p> <p>9 A. Notices, you know, letting people know that</p> <p>10 they're doing, you know, doing something wrong and --</p> <p>11 Q. A DMCA notice tells an ISP that one of their</p> <p>12 subscribers is infringing copyrighted works. Do you</p> <p>13 understand that?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. So in other words, even a DMCA notice</p> <p>16 that goes out to an ISP, it's informing that ISP of</p> <p>17 infringements that have already happened.</p> <p>18 A. Okay.</p> <p>19 Q. Do you want those infringements that have</p> <p>20 already happened to never be -- a person will never be</p> <p>21 held responsible for them?</p> <p>22 A. In some cases, yeah. If the person is not</p> <p>23 knowingly downloading something that is infringement.</p> <p>24 Not everything that people download are, you know, say</p> <p>25 this is infringing on somebody's right. If they do it</p>	Page 267	<p>1 trouble, that's it?</p> <p>2 A. No, I don't know that.</p> <p>3 Q. Okay. And if you were a police officer if</p> <p>4 you had suspicion that someone had done something --</p> <p>5 A. Yeah.</p> <p>6 Q. -- but you're not actually convinced, you'd</p> <p>7 want to gather more evidence, right?</p> <p>8 MS. McENTEE: Counsel, again, objection.</p> <p>9 This calls for speculation, has nothing to do with the</p> <p>10 claims or defenses in this case, and we're going down</p> <p>11 a path now that is highly argumentative and improper.</p> <p>12 BY MR. BANDLOW:</p>	Page 269